



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

November 22, 2020

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/23/2020

BY ECF

The Honorable Gregory H. Woods
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ethan Phelan Melzer*, S1 20 Cr. 314 (GHW)

Dear Judge Woods:

At the September 7, 2020 conference, the Government informed the Court that it anticipated producing a limited quantity of classified discovery to the defense, pursuant to the Classified Information Procedures Act (“CIPA”). The Government writes to provide the Court with additional information about the procedures under CIPA that govern the Government’s classified discovery production and to request that (i) the Court enter a protective order, on consent, governing classified materials to be provided in discovery; and (ii) the Court appoint a Classified Information Security Officer in this matter.

As detailed in the Government’s letter dated September 11, 2020, *see* Dkt. No. 36, CIPA specifies procedures for the production of classified information to the defense and litigation over the use of that classified information at a hearing or trial. *See In re Terrorist Bombings of U.S. Embassies in E. Africa*, 552 F.3d 93, 121 (2d Cir. 2008) (CIPA “imposes upon district courts a mandatory duty to guard against the unauthorized disclosure of any classified material disclosed by the United States to any defendant in a criminal case.” (internal quotation marks omitted)). As relevant at this juncture, Section 3 of CIPA provides that “[u]pon motion of the United States, the court shall issue an order to protect against the disclosure of any classified information disclosed by the United States to any defendant in any criminal case in a district court of the United States.” In this case, defense counsel Jonathan Marvinny, Esq., whose security clearance has been re-activated, has consented to a proposed CIPA § 3 protective order, attached hereto as Exhibit A (the “CIPA Protective Order”), which is modeled after protective orders used in other cases involving classified information. *See, e.g., United States v. Schulte*, No. 17 Cr. 548 (PAC) (SDNY) Dkt. No. 61. The Government therefore respectfully submits the CIPA Protective Order for the Court’s consideration and requests that the Court enter the CIPA Protective Order.

The Government also respectfully requests that the Court appoint Daniel Hartenstine as the Classified Information Security Officer (“CISO”) in this matter. Mr. Hartenstine, who has been recommended in the enclosed letter, attached hereto as Exhibit B, to be appointed as CISO for the case, is the Chief of Operations for the Litigation Security Group at the Department of Justice. The Litigation Security Group is comprised of security specialists whose responsibility is to act as


GREGORY H. WOODS
United States District Judge